

Appl. No. : 10/706,300
Filed : November 12, 2003

REMARKS

This is responsive to the Examiner's Office Action mailed February 21, 2007. Claim 3 remains as originally filed, Claims 1, 2, and 4-6 have been amended, Claims 7-45 have been cancelled, and Claims 46-49 are new. New Claims 46-49 find support in originally filed Claims 1, 2 and 4, as well as various portions of the current specification and the earlier priority documents, and do not represent new matter. Thus, Claims 1-6 and 46-49 are pending in this application. Reconsideration of the application in view of the foregoing amendments and remarks is respectfully requested.

Rejection of Claims 1, 2, 4, 5 and 15 under 35 U.S.C. 102(e)

In the Office Action, the Examiner rejected Claims 1, 2, 4, 5 and 15 under 102(e) as anticipated by U.S. Patent No. 6,450,984, issued to Lynch et al. (Lynch). Applicants have cancelled Claim 15. Applicants respectfully traverse this rejection with regards to Claims 1, 2, 4, and 5.

The Examiner predicated the rejection of Claims 1 and 4 in part on the disclosure of "an implant with a body comprised of a biocompatible material that may comprise a drug or therapeutic agent deliverable to adjacent tissues". This disclosure, however, is not found in Lynch's provisional filing. In view of such and in view of the fact that Applicants' priority date predates the filing date of the first Lynch application that included disclosure on the use of a therapeutic agent, Applicants respectfully submit that the Examiner has not established that Lynch constitutes 102(e) prior art to the subject matter recited by Claims 1 and 4.

Accordingly, Applicants submit that Claims 1 and 4 are patentable over Lynch. Each of Claims 2 and 5 depend directly from Claims 1 and 4, and therefore, is patentable for at least the same reasons that Claims 1 and 4 are patentable over the applied art. Accordingly, allowance of Claims 1, 2, 4 and 5 is respectfully requested.

Rejection of Claims 3, 6, 7, 8 and 11 under 35 U.S.C. 103(a)

In the Office Action, the Examiner rejected Claims 3, 6, 7, 8 and 11 under 103(a) as unpatentable over Lynch in view of U.S. Patent No. 7,033,603 issued to Nelson ("Nelson").

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Applicants have cancelled Claims 7, 8 and 11. Applicants respectfully traverse this rejection with regards to Claims 3 and 6.

As discussed above, Applicants submit that Claims 1 and 4 are patentable over Lynch. Claims 3 and 6 depend directly from Claims 1 and 4 and therefore, are patentable for at least the same reasons that Claims 1 and 4 are patentable over the applied art. Accordingly, allowance of Claims 3 and 6 is respectfully requested.

Discussion of New Claims

Applicant has added new Claims 46-49 to more particularly set forth additional aspects of Applicants' invention. These claims do not add new matter and are in condition for allowance. Applicant respectfully requests allowance of these claims.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and have made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact Applicants' attorney, at the telephone number below, to resolve any such issue promptly.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the cited references show or teach, even if not expressly discussed herein. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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